REMARKS

This Amendment is submitted in response to the final Office action dated August 22, 2008, setting forth a shortened three month statutory period for reply with a 3 month extension of time expiring on Monday, February 23, 2009. Claims 34-38 and 43 are cancelled herein, which cancellation should not be construed as acquiescence to the grounds of rejection and Applicant reserves the right to continue prosecuting the claims in a continuation application. Hence, claims 1-14, 16-33, 41-42 and 45-47 are pending in the application, with claims 1 and 14 being independent claims.

I. Rejections of claims under 35 U.S.C. § 102

Claims 1-12 and 45-47 are rejected under 35 U.S.C. § 102(b) as anticipated by published U.S. patent application 2003/00118558 to Heffner et al (hereinafter "Heffner"). Claim 1 is an independent claim from which claims 2-12 and 45-47 depend. Accordingly, our analysis begins with claim 1. Independent claim 1 has been amended to further refine the meaning of the term "loss mitigation action" as set forth in the previous response. Namely, claim 1 is amended to include the limitation of "the loss mitigation action comprising at least one of a payment plan associated with the at least one loan, the payment plan structured to allow a mortgager associated with the at least one loan to make delinquent payments and thereby avoid foreclosure proceedings of the at least one loan, and a refinancing plan associated with the least one loan, the refinancing plan having at least one term that is more favorable than the same term of the at least one loan, the refinancing plan structured to allow a mortgager associated with the at least one loan to avoid foreclosure proceedings." Support for this amendment can be found throughout the specification, including at pg. 8, lines 7-10, and pg. 61, lines 4-9. This amendment is made to clarify the invention set out in claim 1 to reflect that the application of risk filters may be followed by a provision of specific loss mitigation actions for the securitized loan pool, namely a payment plan or a refinancing plan, that are structured to avoid foreclosure proceedings.

The Office action suggests that the provision of a loss mitigation action is taught by the portion of Heffner discussing credit slots and automatic pool pricing and bid submission. *See Office action, pg. 3.* Heffner discusses the notion of credit slotting and the like at paragraphs 369-376. With respect to this discussion, credit slotting is used for the purposes of calculating a prices for loans, recommending a price for a pool, and calculating a bid for a pool. Since

Heffner is concerned with providing information to investors to make bids on a pool of loans for the purpose of securitization (see, e.g., Heffner paragraph 0319), Heffner does not disclose or suggest the notion of providing a loss mitigation action in the form of a repayment plan or a refinancing plan, as set forth in amended claim 1.

For at least the reasons set forth above, Heffner does not anticipate claim 1 of the present application. Claim 2-13 and claims 45-47 depend from and include all limitations of claim 1. Thus, claims 2-13 and 45-47 are not anticipated by and are patentable over Heffner for at least the same reasons as claim 1. It is noted that claim 13 depends from claim 1, but is not referenced in the rejection of claims 2-12, but rather is referenced in the rejection of § 103 rejections discussed below. This appears to be typographical error; hence, it is respectfully submitted that claim 13 is patentable for at least the same reasons as claims 1-12.

II. Rejection of claims under 35 U.S.C. § 103(a)

Claims 14, 16-20, 22-33, and 42 are rejected under 35 U.S.C. § 103(a) as being unpatentable under Heffner as applied to claim 1 and further in view of U.S. Patent No. 5,939,775 to McCauley (hereinafter "McCauley"). Claim 21, depending from claim 14, is rejected under the Heffner, McCauley combination, further in view of Sellers. Reference to claim 13 in the § 103 rejections is believed to be a typographical error.

Claim 14 is an independent claim from which claims 16-20, 21-33, 42 depend from and include all limitations of claim 14. Thus, claims 16-33 and 42 are patentable over the combination of Heffner and McCauley for at least the same reasons as claim 1.

1. The Combination of Heffner and McCauley does not disclose or suggest the notion of applying a liquidation time value decision tree to obtain an estimated liquidation time.

The Office action relies on McCauley to teach the liquidation time aspect of claim 14. *See Office action, paragraph 9.* It is respectfully submitted that McCauley does *not* disclose "obtaining an estimated liquidation time between a last interest paid date for the loan and a receipt of the net proceeds from the sale of the property, wherein the operation of obtaining an estimated liquidation time includes applying a liquidation time value decision tree" as required by previously amended claim 14. This limitation was originally set forth in claim 15, which was canceled in the previous response. In the current Office action (*paragraph 9*), it does not appear that the liquidation time value decision tree aspect of claim 14 has been addressed with

particularity, hence the arguments set forth in the previous response are submitted immediately below (this section 1) along with additional arguments (section 2).

To the extent McCauley may disclose any aspect of obtaining an estimated liquidation time, McCauley discusses using "a table in loan experience database for historical average fees and costs for the state in which the property is located" as part of estimated foreclosure fees and costs. *See McCauley, col. 8, line 22-25.* Additionally, McCauley references the use of an average time to obtain foreclosure timing information. *See McCauley col. 8, line 39-42 ("the average time a loan takes to foreclose in New Jersey is about 500 days").* Hence, in the REO case, McCauley does not disclose obtaining an estimated liquidation time using a liquidation time value decision tree. Rather, McCauley discusses accessing a database to obtain historical average foreclosure timing for a geographic region.

Particularly, McCauley discusses that in the short payoff, deed-in-lieu, charge off and loan modification cases, "the system estimates the date on which these fees and costs [of foreclosure] will stop accruing. For a short payoff, for example, the system projects, using information in loan experience database 352, that it will typically take 45 days from approval for the deal to close. The system then prorates the fees and costs using the number of days the loan will actually have been in foreclosure relative to the historical average time a loan in that state would spend in foreclosure." *McCauley, col. 8, lines 28-32.* McCauley is silent as to how the 45 day number is obtained besides indicating the "use of information in the database." McCauley does not disclose the use of a decision tree to obtain liquidation timing for short payoff, deed-in-lieu, charge off and loan modification cases. Moreover, the use of a liquidation decision tree is not inherent to McCauley because McCauley could simply and likely uses historical timing values as is taught with the case of foreclosure timing.

2. McCauley cannot be modified to provide a liquidation time value decision tree in place of historical averages as it would change the principle of operation of McCauley

MPEP § 2143.01 indicates that "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." It is respectfully submitted, that modification of McCauley to use a liquidation time value decision tree would change the principle of operation of McCauley and hence reference to McCauley is insufficient to disclose the liquidation time value decision tree limitation of claim 14.

Given that McCauley uses a historical average time value for liquidation timing and not a liquidation time value decision tree, modifying McCauley to use the liquidation time value tree

would require substantial modification of McCauley. First, McCauley does not describe or appear to include data, such as the time factors of dependent claims 16-33 used in the liquidation time value decision tree, hence the databases of McCauley would have to be modified to include such data. McCauley does include a fair amount of data to obtain the various information set out in Fig. 6. Yet McCauley does not disclose liquidation time value decision tree data that would be necessary for McCauley to employ a liquidation time value decision tree. For example, dependent claims 16-33 of the present application set forth particular first through sixth time factors for defining the liquidation time value decision tree. As discussed in detail below, however, it is respectfully submitted that none of the recited sections of McCauley set forth in paragraphs 10-21 refer to the application of the claimed first through sixth time factors. McCauley simply does not disclose a liquid time value decision tree and any particular time factors applicable to such a decision tree. Hence, McCauley would have to be modified to include such data substantially altering the principle of operation of McCauley as McCauley only relies on a historical liquidation timing averages for a given area.

Secondly, McCauley does not describe any formulation for using time factors or otherwise to employ a liquidation time value decision tree, hence McCauley would have to be modified to include such a liquidation time value decision tree. Again, McCauley would require substantial modification and an alteration of principle to set aside the historical average information and employ a liquidation time value decision tree.

Finally, neither McCauley nor any other art of record suggests or discusses any negative impact from using a historical average in its REO timing. Hence, one of ordinary skill in the art would not be motivation to replace the minimally computation intensive historical timing disclosure of McCauley, with the far more computationally intensive liquidation time value decision tree of claim 14.

With respect to dependent claims 16, 17, the Office action relies on Heffner to disclose the recited limitations. *See Office action, paragraphs 10 and 11.* With respect to dependent claims 18-33, the Office action relies on McCauley to disclose the recited limitations of the claims. *See Office action, paragraphs 12-21.* It is respectfully submitted that neither McCauley nor Heffner disclose a liquidation time value decision tree, let alone the particularly claimed liquidation time value decision tree specifics set out in claims 16-33.

For example, with respect to claim 16, the Office action relies on the disclosure of "time line for loan life" in paragraph 18 and a payment plan in paragraph 30 of McCauley. *See Office action, paragraph 10.* Claim 16, however, specifically requires "wherein the operation of

applying a liquidation time value decision tree includes obtaining a first time factor to account for a payment plan associated with the at least one loan; wherein the operation of associating further includes associating the first time factor with the electronic record of the at least one loan; and wherein the operation of applying includes applying a payment plan liquidation time filter to identify each at least one loan with a specified first time factor to account for a payment plan." McCauley nor Heffner disclose a liquidation time value decision tree. Hence, neither McCauley nor Heffner could possibly disclose the specific limitations set out in claim 16. Similar distinctions can be made with respect to claims 17-33.

Accordingly, for at the least these reasons, the combination of Heffner and McCauley does not disclose each and every limitation of claims 14, 16-33 and 42, and is therefore insufficient to render claims 14, 16-33 and 42 obvious under 35 U.S.C. § 103.

3. Neither Heffner nor McCauley disclose or suggest the provision of one or more loss mitigation actions based on the estimated liquidation timing

Claim 14 is amended herein to require "providing a loss mitigation action for the loan pool based on an assessment of each of the at least one loans having the specified estimated liquidation time, the loss mitigation action comprising at least one of identifying an underperforming loan servicer associated with the at least one loan, identifying a delay in a foreclosure proceeding associated with the at least one loan, identifying a delay in a bankruptcy proceeding associated with the at least one loan, and identifying a delay associated with a litigation associated with the least one loan." Support for this amendment may be found throughout the specification, including at pg. 18, lines 26-30; pg. 23, lines 14-17; pg. 47, lines 20-24; pg. 64, lines 1-30; and, pg. 65, lines 10-16.

As set out above and in the Office action, Heffner is concerned with the notion of providing information to investors to make bids on a pool of loans for the purpose of securitization. *See, e.g., Heffner paragraph 0319.* Heffner is not concerned with the notion of loss mitigation actions for loans in pool involving (a) identifying an underperforming loan servicer, (b) identifying a delay in a foreclosure proceeding, (c) identifying a delay in a bankruptcy proceeding, or (d) identifying a delay in a litigation, any of which when associated with a loan results in losses with the loan.

Neither Heffner nor McCauley address any of these loss mitigation actions. Hence, for at least this additional reason, claims 14 along with dependent claims 16-33 and 42 are patentable under 35 U.S.C. § 103 over the combination of Heffner and McCauley, and Sellers with respect to claim 21.

III. Conclusion

For at least the reasons recited herein, it is believed that all claims are in form for allowance and issuance of a notice of allowance is respectfully requested. A petition for a three-month extension of time, Request for Continued Examination ("RCE"), and Information Disclosure Statement accompany this Amendment and Response. Accordingly, please charge Deposit Account number 04-1415 in the amount of $1,920.00 for the three-month extension of time and the RCE fee. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

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